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In re Application of : JUL 19 2010
HE, TING et al. : DECISION ON
Application No.: 10/800,553 : PETITION
Filing or 371(c) Date: March 15, 2004 :
Attorney Docket Number: 3994994-149832 :

This is a decision in response to the "Notice to Withdraw Holding of Abandonment," filed October 30, 2009.

This petition is **DISMISSED**.

Any further petition for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowability, mailed June 10, 2009. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on October 14, 2009.

The Notice of Allowability

A review of the Notice of Allowability reveals that the Notice clearly required drawings. The Notice states: "CORRECTED DRAWINGS must be submitted."

The statute, 35 U.S.C. § 133, Time for prosecuting application, states

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable.

This section of the statute is further clarified in Office rule, 37 CFR § 1.135, Abandonment for failure to reply within time period, which states

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

This section explains that the reply must be both complete and proper as the condition of the application may require.

Here, Applicant filed a reply on June 19, 2009, to with – the issue fee; however, corrected drawings were also required. Applicant failed to timely file corrected drawings. The application was properly abandoned.

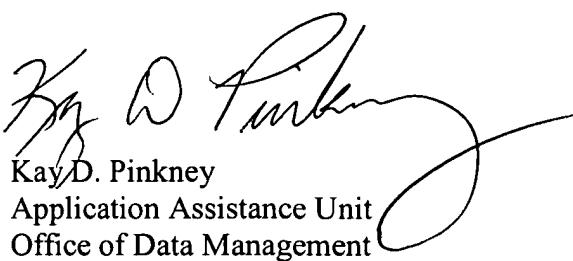
Further correspondence with respect to this matter should be addressed as follows:

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 756-1547.


Kay D. Pinkney
Application Assistance Unit
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